

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 16, 2024

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

WAI CONSTRUCTION GROUP, LLC.,

Plaintiff,

v.

WAVE QUANTUM, INC., HARVEY
PRICKETT,

Defendants.

No. 4:23-CV-05091-MKD

ORDER DENYING PLAINTIFF'S
MOTION FOR DEFAULT
JUDGMENT

ECF No. 14

Before the Court is Plaintiff's Motion for Default Judgment. ECF No. 14.

The Court has identified a procedural deficiency in Plaintiff's First Amended Complaint that precludes granting Plaintiff's motion. Plaintiff attached the contract and invoices at issue as exhibits to its initial complaint. *See* ECF No. 1 at 10-25. The First Amended Complaint purports to refer to "attached" exhibits. *See, e.g.,* ECF No. 6 at 4 ¶ 13 ("A true and accurate copy of the MSA is attached hereto as Exhibit A."); *id.* at ¶ 14 ("A true and accurate copy of the Statement of Work ... is attached hereto as Exhibit B."); *id.* at 5 ¶ 20 ("A true and accurate copy of the [invoice] is attached hereto as Exhibit C."). However, there are no attached exhibits.

1 While Local Civil Rule 10(c) provides that “[p]reviously filed pleadings,
2 exhibits, or documents shall not be unnecessarily refiled but rather shall be
3 incorporated by reference,” LCivR 10(c), Plaintiff’s First Amended Complaint did
4 not seek to “incorporate[] by reference” the initial complaint’s exhibits. The Court
5 is thus unable to consider the contract and invoices at issue. *Cf. Ramirez v. Cnty. of*
6 *San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015) (noting “[i]t is well-
7 established” in the Ninth Circuit that an “amended complaint supersedes the
8 original, the latter being treated thereafter as non-existent.”) (quotations and citations
9 omitted). Plaintiff’s Motion for Default Judgment is therefore denied. Plaintiff may
10 cure this deficiency by filing a Second Amended Complaint, together with exhibits
11 or unambiguous incorporations by reference to the initial complaint’s exhibits.

12 Accordingly, **IT IS HEREBY ORDERED:**

13 1. Plaintiff’s Motion for Default Judgment, **ECF No. 14**, is **DENIED**.

14 **IT IS SO ORDERED.** The District Court Executive is directed to file this
15 order and provide copies to counsel.

16 DATED July 16, 2024.

17 s/Mary K. Dimke
18 MARY K. DIMKE
19 UNITED STATES DISTRICT JUDGE
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